

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

WILLIAM DAVID SMITH,)
Plaintiff,)
v.) CV 322-133
TIMOTHY C. WARD;)
BRIAN CHAMBERS; and)
ANTOINE CALDWELL,)
Defendants.)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, incarcerated at Johnson State Prison (“JSP”) in Wrightsville, Georgia, is proceeding *pro se* and *in forma pauperis* (“IFP”) in this case filed pursuant to 42 U.S.C. § 1983. Because Plaintiff is proceeding IFP, his complaint must be screened to protect potential defendants. Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984) (*per curiam*); Al-Amin v. Donald, 165 F. App’x 733, 736 (11th Cir. 2006) (*per curiam*).

I. BACKGROUND

Plaintiff names the following Defendants: (1) Timothy C. Ward, Commissioner, Georgia Department of Corrections; (2) Brian Chambers, JSP Warden; and (3) Antoine Caldwell, Former JSP Warden. (See doc. no. 1, pp. 1, 4.) Taking all of Plaintiff's factual allegations as true, as the Court must for purposes of the present screening, the facts are as follows.

On September 15, 2021, Defendant Caldwell directed a tactical squad to shake down Plaintiff's dormitory, but the squad found no contraband. (Id. at 5-6.) Instead, the squad found, and confiscated, Plaintiff's Wahl hair clipper set that Defendant Caldwell and other correctional officers at JSP knew Plaintiff possessed because he cut hair for inmates in the mental health dormitories. (Id. at 6.) Plaintiff filed a grievance about the clippers having been taken, and Defendant Caldwell granted the grievance and said Plaintiff would be reimbursed for the clippers. (Id. at 7-8, 10.) Plaintiff has not received monetary reimbursement or a new set of hair clippers. He seeks replacement of his hair clippers valued at \$150, as well as \$300,000 in punitive damages. (Id. at 6.)

II. DISCUSSION

A. Legal Standard for Screening

The complaint or any portion thereof may be dismissed if it is frivolous, malicious, or fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune to such relief. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). A claim is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). "Failure to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard as dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6)." Wilkerson v. H & S, Inc., 366 F. App'x 49, 51 (11th Cir. 2010) (citing Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)).

To avoid dismissal for failure to state a claim upon which relief can be granted, the allegations in the complaint must "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is

liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). That is, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555. While Rule 8(a) of the Federal Rules of Civil Procedure does not require detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A complaint is insufficient if it “offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action,’” or if it “tenders ‘naked assertions’ devoid of ‘further factual enhancement.’” Id. (quoting Twombly, 550 U.S. at 555, 557). In short, the complaint must provide a ““plain statement’ possess[ing] enough heft to ‘sho[w] that the pleader is entitled to relief.’”” Twombly, 550 U.S. at 557 (quoting Fed. R. Civ. P. 8(a)(2)).

Finally, the Court affords a liberal construction to a *pro se* litigant’s pleadings, holding them to a more lenient standard than those drafted by an attorney. Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404 U.S. 519, 520 (1972). However, this liberal construction does not mean that the Court has a duty to re-write the complaint. See Bilal v. Geo Care, LLC, 981 F.3d 903, 911 (11th Cir. 2020); Snow v. DirecTV, Inc., 450 F.3d 1314, 1320 (11th Cir. 2006).

B. Plaintiff Fails to State a Claim Upon Which Relief May Be Granted

1. Plaintiff Fails to State a Claim Against Defendants Ward and Chambers

The Eleventh Circuit has held that a district court properly dismisses a defendant where a prisoner, other than naming the defendant in the caption of the complaint, fails to state any allegations that associate the defendant with the purported constitutional violation. Douglas v. Yates, 535 F.3d 1316, 1321-22 (11th Cir. 2008) (“While we do not require

technical niceties in pleading, we must demand that the complaint state with some minimal particularity how overt acts of the defendant caused a legal wrong."); see also *Iqbal*, 556 U.S. at 678 (requiring sufficient factual allegations to draw reasonable inference of defendant liability for alleged misconduct). Thus, Plaintiff must describe how each individual participated in any alleged constitutional violation or other acts and omissions he claims to have caused him injury. Here, Plaintiff lists Defendants Ward and Chambers in the caption of the complaint and the portion of the form reserved for identifying defendants, (doc. no. 1, pp. 1, 4), but he does not mention them anywhere in his statement of claim. As Plaintiff does not connect either Defendant to an alleged constitutional violation, he fails to state a viable claim for relief against them, and they should be dismissed.

2. Plaintiff Fails to State a Claim for Loss of Personal Property

Plaintiff's claim regarding loss of his hair clippers fails to state a federal claim for relief. The Fourteenth Amendment does not protect against all deprivations of property, only against deprivations that occur "without due process of law." *Parratt v. Taylor*, 451 U.S. 527, 537 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). Georgia has created a civil cause of action for the wrongful deprivation of personal property. O.C.G.A. § 51-10-1. This statutory provision covers the unauthorized deprivation of an inmate's property by prison officials. *Grant v. Newsome*, 411 S.E.2d 796, 799 (Ga. Ct. App. 1991). The statutory cause of action constitutes an adequate post-deprivation remedy under *Parratt*. See *Byrd v. Stewart*, 811 F.2d 554, 555 n.1 (11th Cir. 1987). Thus, Plaintiff has an adequate remedy at State law, and he fails to state a valid § 1983 claim against any Defendant for the loss of personal property.

3. Plaintiff Fails to State a Claim Regarding Correctly Following Prison Regulations and Processing His Grievance

To the extent Plaintiff also complains the confiscation of his property during the shakedown, as well as processing his grievance and complying with the stated resolution, were not done in accordance with prison regulations, he fails to state a constitutional claim. An allegation of non-compliance with a prison regulation by prison officials is not, in itself, sufficient to give rise to a claim upon which relief may be granted. See Sandin v. Conner, 515 U.S. 472, 481-82 (1995) (noting that many prison regulations are “primarily designed to guide correctional officers in the administration of a prison” and that “such regulations are not designed to confer rights on inmates”); Mathews v. Moss, 506 F. App’x 981, 984 (11th Cir. 2013) (*per curiam*) (finding district court properly dismissed prisoner’s claim concerning prison officials’ alleged failure to follow prison procedures with respect to grievances); Taylor v. White, Civ. No. 11-0377-CG-N, 2012 WL 404588, at *5 (S.D. Ala. Jan. 10, 2012) (“A claim based on a prison official’s failure to follow prison regulations or state regulations, without more, simply does not state a claim for deprivation of a constitutional right.”), *adopted by*, 2012 WL 403849 (S.D. Ala. Feb. 7, 2012).

Moreover, under Eleventh Circuit law, “an inmate has no constitutionally-protected liberty interest in access to [a prison grievance] procedure.” Bingham v. Thomas, 654 F.3d 1171, 1177-78 (11th Cir. 2011) (*per curiam*). Thus, any claim that a Defendant did not follow the grievance procedure properly fails to state a claim upon which relief may be granted. See id.; see also Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (“[T]he existence of a prison grievance procedure confers no liberty interest on a prisoner. . . . A state-created prison grievance procedure is simply a procedural right and does not confer any substantive right upon an inmate.”).

4. Plaintiff Fails to State an Equal Protection Claim

Plaintiff states in conclusory fashion that the loss of, and failure to replace, his clippers raises an “equal protection issue,” but he offers no details in support of an equal protection claim. “To establish an equal protection claim, a prisoner must demonstrate that (1) he is similarly situated with other prisoners who received more favorable treatment; and (2) his discriminatory treatment was based on some constitutionally protected interest such as race.” Jones v. Ray, 279 F.3d 944, 946-47 (11th Cir. 2001); see also Elston v. Talladega Cnty. Bd. of Educ., 997 F.2d 1394, 1406 (11th Cir. 1993) (requiring plaintiff to demonstrate that challenged action was motivated by an intent to discriminate in order to establish equal protection violation).

Plaintiff does not meet these criteria. Plaintiff does not allege that he is similarly situated with other prisoners who received more favorable treatment or that any alleged discriminatory treatment was based on some constitutionally protected interest. Accordingly, Plaintiff fails to state a viable equal protection claim.

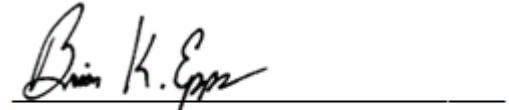
5. Official Capacity Monetary Damages

The complaint is not entirely clear as to whether Plaintiff is attempting to sue Defendants in their official capacities, as he does not make any delineation in his caption, but he does want the Court to “officially” hold certain entities responsible for the loss of his clippers. (Doc. no. 1, p. 6.) However, the Eleventh Amendment bars official capacity claims against state prison officials for money damages. See Kentucky v. Graham, 473 U.S. 159, 169 (1985). Therefore, to the extent Plaintiff may be attempting to raise any official capacity claims against Defendants for monetary relief, such claims fail as a matter of law.

III. CONCLUSION

For the reasons set forth above, the Court **REPORTS** and **RECOMMENDS** Plaintiff's complaint be **DISMISSED** for failure to state a claim upon which relief can be granted and that this civil action be **CLOSED**.

SO REPORTED and RECOMMENDED this 13th day of January, 2023, at Augusta, Georgia.



Brian K. Epps
BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA